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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

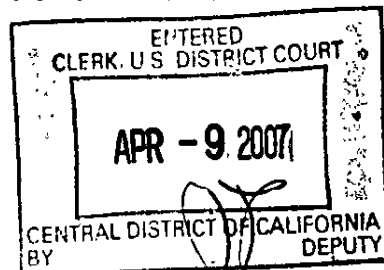
In re: )  
TENET HEALTHCARE )  
CORPORATION CORPORATE )  
DERIVATIVE LITIGATION )  
This Documents Relates )  
to )  
ALL ACTIONS )

CV 03-11 RSWL (RZx)

ORDER DENYING  
PLAINTIFFS' MOTION FOR  
ATTORNEY'S FEES AND  
REIMBURSEMENT OF  
EXPENSES

Plaintiffs' Motion for Attorney's Fees and  
Reimbursement of Expenses was filed on October 23, 2006 and  
taken under submission by this Court on November 8, 2006.  
The Court received Defendant Tenet's Opposition to the  
Motion on October 30, 2006. Plaintiffs' Reply was received  
on November 6, 2006.

Pursuant to Rule 78 of the Federal Rules of Civil



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1 Procedure and Central District Local Rule 7-15, the Court  
2 finds that oral argument on this matter is not necessary.

3  
4 Having considered all the papers submitted in this  
5 matter, **THE COURT NOW FINDS AND RULES AS FOLLOWS:**

6  
7 As a preliminary matter, Tenet's objections to the  
8 Declarations of Professors Rubinstein and Stout are  
9 **OVERRULED as Moot.**

10  
11 In addition, the Court finds that the Supreme Court's  
12 holding in Colorado River Water Conservation Dist. v. United  
13 States, 424 U.S. 800 (1976), does not counsel against the  
14 exercise of its jurisdiction here. Because the issues  
15 presented in this Motion are materially different from those  
16 being argued in the State Court appeal, there is no danger  
17 of piecemeal litigation. Therefore, the Court does not find  
18 that the current circumstances are so "exceptional" that  
19 they merit abstention.

20  
21 Turning to the merits of Plaintiffs' Motion, the Court  
22 finds that there is no applicable exception to the American  
23 Rule that would merit the award of fees in this Action. As  
24 such, Plaintiffs' Motion is **DENIED.**

25  
26 In the United States, parties are ordinarily required

1 to bear their own attorney's fees. Buckhannon Board and  
2 Care Home, Inc. v. West Virginia Department of Health and  
3 Human Resources, 532 U.S. 598, 602 (2001). Under this  
4 "American Rule," there is a "general practice of not  
5 awarding fees to a prevailing party absent explicit  
6 statutory authority." Key Tronic Corp. v. United States,  
7 511 U.S. 809, 819 (1994).

8  
9 While attorney's fees are not ordinarily recoverable in  
10 the absence of a statute or enforceable contract providing  
11 for such an award, limited exceptions to the American rule  
12 have developed where overriding considerations of justice  
13 would compel such a result. Fleischmann Distilling Corp. v.  
14 Maier Brewing Co., 386 U.S. 714, 717-18 (1967).

15  
16 These exceptions fall into three categories. First, a  
17 court may assess attorney's fees as a sanction for the  
18 "willful disobedience of a court order." Chambers v. NASCO,  
19 501 U.S. 32, 45 (1991) (internal citations omitted).  
20 Second, a court may assess attorney's fees when a party has  
21 "acted in bad faith, vexatiously, wantonly, or for  
22 oppressive reasons." Id. Third, a court may award  
23 attorney's fees to a party whose litigation efforts directly  
24 benefit others. Id. This category includes both the  
25 "common fund exception" and the "substantial benefit  
26 exception," which derive from a court's historic equity

1 jurisdiction. Id.; see Mills v. Elec. Auto-Lite Co., 396  
2 U.S. 375, 392 (1970).

3  
4 Here, Federal Derivative Counsel contend that either or  
5 both of two exceptions to the American Rule apply to the  
6 current Action - the common fund exception and the  
7 substantial benefit exception. The Court disagrees.

8  
9 In this Motion, Federal Derivative Counsel argue that  
10 they "do not seek to change the terms of the global  
11 settlement, or interpose themselves into the settlement  
12 agreement." [Reply, 12:6-7]. Rather, Counsel contend that  
13 "basic concepts of equity require payment of Federal  
14 Derivative Counsel's fees by Tenet (if from nowhere else  
15 then from its general funds) for the work they did and the  
16 risks they took, and from which Tenet received substantial  
17 benefit." [Reply, 12: 15-18]. Thus, "Federal Derivative  
18 Counsel are seeking fees directly from Tenet." [Reply,  
19 14:13].

20  
21 If Federal Derivative Counsel are seeking funds  
22 directly from Tenet, however, then the common fund exception  
23 cannot apply.

24  
25 Under the common fund doctrine, "a private plaintiff,  
26 or his attorney, whose efforts create, discover, increase or

1 preserve a fund to which others also have a claim, is  
2 entitled to recover from the fund the costs of his  
3 litigation, including attorney's fees." Vincent v. Hughes  
4 Air West, 557 F.2d 759, 769 (9th Cir. 1977).

5  
6 The common fund from which an award of attorney's fees  
7 will be drawn need not have been created by a judgment after  
8 a full trial on the merits; the fund may be created in the  
9 settlement of an action. E.g., Staton v. Boeing Corp., 327  
10 F.3d 938 (9th Cir. 2003); Wininger v. SI Management, L.P.,  
11 301 F.3d 1115 (9th Cir. 2002). However, any award of  
12 attorney's fees must be satisfied out of the fund;  
13 beneficiaries of the fund may not be held personally liable  
14 for the litigation costs. Vincent, 557 F.2d at 770.

15  
16 Here, Federal Derivative Counsel is not requesting an  
17 award of attorney's fees from the common fund created in the  
18 State Court Settlement. Rather, Counsel is requesting that  
19 this Court award fees to it directly from Tenet. Such an  
20 award cannot be justified under the common fund doctrine,  
21 which only provides for awards to be made out of a common  
22 fund. Therefore, the Court finds that the common fund  
23 exception does not apply here.

24  
25 Federal Derivative Counsel's argument that it is  
26 entitled to fees under the substantial benefit doctrine is

1 similarly misplaced.

2  
3 Under the substantial benefit doctrine, a court may  
4 award attorney's fees where the plaintiffs' successful  
5 litigation confers a substantial benefit on the members of  
6 an ascertainable class, and where the court's jurisdiction  
7 over the subject matter of the suit makes possible an award  
8 that will operate to spread the costs proportionately among  
9 them. Vincent, 557 F.2d at 769, n. 7 (1977).

10  
11 However, the Ninth Circuit has clearly expressed that  
12 the substantial benefit doctrine does not apply where the  
13 benefits derived by the clients of the attorneys seeking  
14 fees are pecuniary. Id. at 768 ("When the benefit is  
15 pecuniary, we believe the case should be measured against  
16 the traditional criteria of the common fund doctrine.");  
17 compare Lewis v. Anderson, 692 F.2d 1267 (9th Cir. 1982)  
18 (awarding attorney's fees where plaintiff conferred  
19 substantial benefit upon other shareholders by prompting  
20 defendant corporation to obtain shareholder ratification of  
21 changes in stock option plan, which corporation had  
22 originally failed to disclose).

23  
24 Here, Federal Derivative Counsel argues that the  
25 substantial benefit doctrine should apply because although  
26 the claims against Tenet in the current Action will be

1 dismissed pursuant to the terms of the State Settlement  
2 Agreement, Federal Derivative Counsel conferred a  
3 "substantial benefit" to Tenet in creating the \$50 million  
4 settlement fund. [Motion, 16:19-20].

5  
6 However, even if this Court assumes arguendo that it  
7 was the efforts of Federal Derivative Counsel that created  
8 the \$50 million fund, the pecuniary nature of this benefit  
9 takes Counsel's application for fees outside the province of  
10 the substantial benefit doctrine.

11  
12 Therefore, an award of Counsel's attorney's fees cannot  
13 be justified under the substantial benefit doctrine, either.

14  
15 Given the absence of any other exception that would  
16 apply to warrant an award of attorney's fees, Plaintiffs'  
17 Motion for Attorney's Fees and Reimbursement of Expenses is  
18 **DENIED.**

19  
20  
21 **IT IS SO ORDERED.**

22 **RONALD S.W. LEW**

23 **RONALD S.W. LEW**  
24 Senior U.S. District Judge

25 DATED: April 5, 2007  
26